IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Bail Appl..No. 7561 of 2007()

CRIME NO.71/07 OF CHELANNUR EXCISE RANGE.

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PETITIONERS :

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1. KUNHILAKSHMI K.M,AGED 46 YEARS,
   D/O.LATE KUTTAYI,KALATHIL MEETHAL HOUSE,
   KONOTTE P.O,KUNNAMANGALAM (VIA),KOZHIKODE DISTRICT

2. SANTHA K.M,AGED 40 YEARS,D/O.LATE
   KUTTAYI,KALATHIL MEETHAL HOUSE,KONOTTE P.O,
   KUNNAMANGALAM (VIA),KOZHIKODE DISTRICT.

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
   PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

2. EXCISE INSPECTOR CHELANNUR EXCISE
   RANGE.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7561 OF 2007

Dated this the 14th day of December, 2007

ORDER

The petitioners – two women, face allegations under the Kerala Abkari Act. It is alleged that they had kept in their possession, in a shed belonging to them and in the name of the 1st petitioner, about 175 litres of Wash. The seizure was effected on 15/11/07. At the time of seizure, the petitioners were not present in the shed. A crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that they are absolutely innocent and that they do not deserve to endure the trauma of arrest and detention.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications do point to the complicity of the petitioners.

There are no circumstances warranting or justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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//true copy// P.S. to Judge